

*Any type of evidence, circumstantial or physical, is key to clearing hurdles of an abuse or neglect case.*

>> “You get better information at the beginning, the quicker you get to a scene, and sometimes even (better) evidence,” said MFCU Investigator Reed Wilbers, who worked for the Georgetown Police Department for 20 years before joining MFCU. “As time goes by, stories change, memories fail, evidence disappears.”

He has tried to build relationships with workers at the cabinet, so they may notify him if something egregious occurs in a facility. Cohron, who was recognized as the Prosecutor of the Year by the Kentucky Elder Abuse Council in 2008, said he is hopeful the notification process for law enforcement can be addressed legislatively.

Any delay adds more importance to gathering and preserving evidence. Paper evidence may contain records from the facility, including personnel records of alleged suspects showing the training they received, or timesheets revealing when employees worked. Facility records may contain care plans for the specific resident, which investigators can compare to other records to determine if staff followed the plan. They may also reveal complaints from family or others, to whom they were made and whether the facility followed up. They may also include photographs, or internal investigation materials, including witness statements. The evidence may also include medical records of the resident from the facility and other medical facilities, providing notice to staff or a facility of a resident's condition.

“Getting records and knowing what's required and knowing what someone did is as important as getting to the crime scene and maintaining physical evidence,” said MFCU Investigator Manager Dan Gibbons, a former Lexington Police detective. “And in a lot of cases it's more important, because that's all we've got.”

Video from the facility can be vital to an investigation. It may reveal abuse by staff where the physical indicators of abuse may not appear during an initial physical assessment of the resident. Video may combat explanations like there were no physical markings on the resident, or bruises were the result of defending against the resident's combative behaviors.


While the cabinet investigates complaints for regulatory violations, MFCU and other law enforcement agencies review complaints for criminal violations. These can include crimes ranging from homicide to tampering with physical evidence, but typically involve abuse or neglect under KRS Chapter 209. Under KRS 209.020(8), abuse is the infliction of injury, sexual abuse, unreasonable confinement, intimidation, or punishment that results in physical pain or injury, including mental injury. Neglect means a situation in which an adult is unable to perform or obtain for herself the goods or services necessary to maintain her health or welfare, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult, as defined under KRS 209.020(4).

The penalty section, KRS 209.990, makes knowing abuse or neglect a class C felony. Wanton abuse or neglect is a class D felony and reckless abuse or neglect is a class A misdemeanor. Anyone who knowingly or wantonly fails to report suspected abuse or neglect faces a class B misdemeanor. For information on relevant statutes, law enforcement agencies may also refer to the Elder Abuse Manual published by the Office of the Attorney General.

Unlike other criminal statutes, the elements of abuse or neglect are not laid out in a list in KRS Chapter 209. Determining the elements involves sifting through the

definitions and penalty sections. A perpetrator is guilty of knowing abuse when he is aware that his conduct is of the nature of inflicting injury, sexual abuse, unreasonable confinement, intimidation, or punishment on a resident, and his conduct results in physical pain or physical or mental injury. He is also guilty of knowing abuse if he is aware that the circumstance of such conduct exists. In 2009, the MFCU obtained a conviction for knowing abuse against a licensed practical nurse who ignored requests from other staff to check on a resident who was exhibiting signs of distress, then failed to attempt resuscitation when it appeared the resident had stopped breathing, even though the resident was a “full code” patient.

For wanton abuse, a prosecutor must prove that the perpetrator was aware of and consciously disregarded the risk that abuse or neglect would occur or that the circumstance of abuse or neglect existed. The prosecutor must also prove that the perpetrator's disregard of the risk was of



**REPORT ABUSE, NEGLECT AND EXPLOITATION**

There is no doubt that most caregivers in the Commonwealth of Kentucky provide capable and proper care to our most vulnerable citizens.

The few who do not, however, must be found, stopped and punished for their actions.

Referrals from concerned citizens are a critical source of information for the Medicaid Fraud and Abuse Control Division. All reported cases are reviewed and, where appropriate, investigations are conducted to determine whether violations have occurred.

Report all suspected abuse, neglect, or exploitation of patients in facilities receiving Medicaid funding to the Office of the Attorney General's Medicaid Fraud and Abuse Control Division toll-free at: 1-877-ABUSE TIP (1-877-228-7384) or visit us online at [www.ag.ky.gov/abuse](http://www.ag.ky.gov/abuse).

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